

A-6743
Variance Request

Install a wood fence measuring a maximum of six and one-half (6 ½) feet in height located forward of the twenty-five (25) foot front (Magnolia Parkway) building restriction line.

Mr. and Mrs. Thomas S. Dann
27 West Kirke Street

CHEVY CHASE VILLAGE
BOARD OF MANAGERS
JUNE 8, 2015 MEETING

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 6/4/2015
SUBJECT: HEARING OF CASE NO. A-6743 VARIANCE REQUEST
MR. THOMAS A. DANN AND MS. MELISSA SHACKLETON DANN; 27 WEST KIRKE STREET
INSTALL A WOOD FENCE MEASURING A MAXIMUM OF SIX AND ONE-HALF (6 ½) FEET IN HEIGHT
LOCATED FORWARD OF THE TWENTY-FIVE (25) FOOT FRONT (MAGNOLIA PARKWAY) BUILDING
RESTRICTION LINE.

NOTICE REQUIREMENTS: Abutting Owners; Public Notice

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code Sec. 8-21(e) states:

No person shall construct any fence or wall which exceeds forty-eight (48) inches in height at any location between the front lot line and the front building restriction line.

APPLICABLE COVENANTS:

Not applicable; verification of compliance with the property's covenants is not required for variance requests authorized by Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [Public Rights-of-Way] of the Village Code.

FACTUAL AND BACKGROUND INFORMATION:

The Property is located on the northwest corner of West Kirke Street and Magnolia Parkway.

The proposed fence would run alongside the north property line and terminate at the front (Magnolia Parkway) property line. The entire fence would be located on private property.

The property is oddly shaped, as Magnolia Parkway runs at an acute angle to West Kirke Street and truncates the east yard of the property. (The south property line measures one hundred thirty-four and forty nine hundredths (134.49) feet in length; the north property line measures fifty three and eighty-three hundredths (53.83) feet in length.)

A small portion of the house closest to the proposed fence is actually located forward of the front (Magnolia Parkway) property line.

The proposed fence would not extend forward of the front plane of the house.

The abutting neighbor to the north (at 20 Magnolia Parkway) recently removed a fence measuring six feet in height that ran along their south property line. The photos for this application were taken prior to removal of that fence. The neighbor does not intend to replace their fence.



Figure 1: View of the north property line. The fence shown, which belonged to the abutting property owner (20 Magnolia Parkway), has since been removed. (This photo was used because it is helpful in giving an indication of the approximate location and height of the proposed fence, which would continue farther forward (east) of the neighbor's). The yellow arrow depicts the approximate location of the 25' front (Magnolia Parkway) BRL.

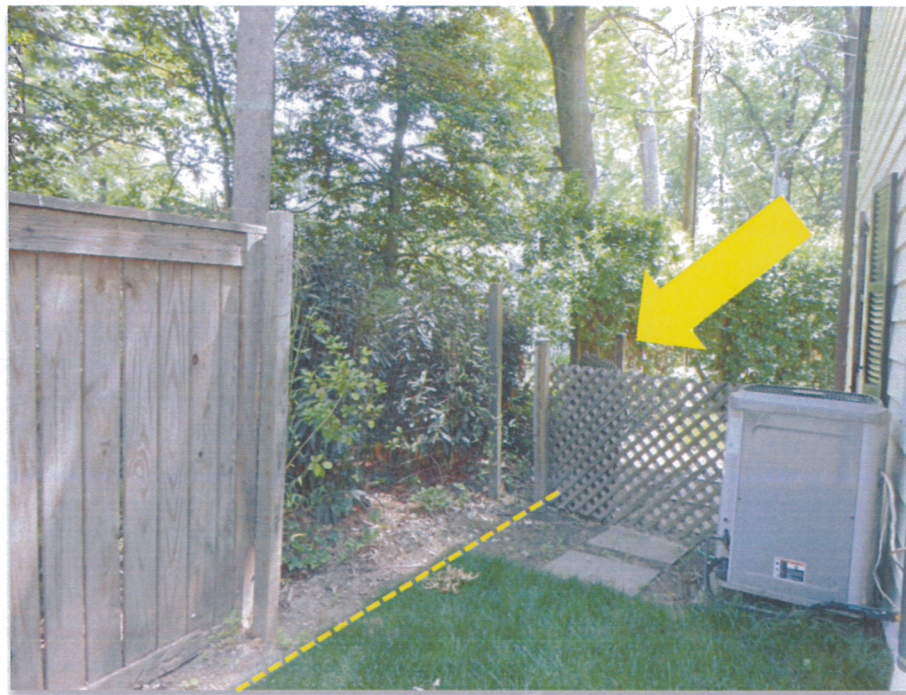


Figure 2: The farthest wood post (see yellow arrow) indicates the approximate location of the front (Magnolia Parkway) property line, where the proposed fence would terminate. (The abutting neighbor's fence has been removed.)



Figure 3: View west, the post indicates the approximate location where the proposed fence would terminate.



Figure 4: View southwest from the Magnolia Parkway public sidewalk.



Figure 5: View south (from the abutting property 20 Magnolia Parkway), the termination point of the proposed fence is visible behind the tree.



Figure 6: View from Magnolia Parkway. The proposed fence would terminate behind the large tree.

The proposed fence has been approved by the Historic Preservation Commission (HPC).

The Village arborist has assessed the property. No trees are proposed for removal and installation of the fence can be accommodated through a Tree Protection Plan to protect trees roots during installation of the fence posts.

To date no letters have been received either in support of or opposition to the request.

Applicable Fees: Building Permit Application: \$50; Variance Application Fee: \$300.

RELEVANT PRIOR CASES

Approvals: There have been many variances granted for fences measuring greater than four (4) feet in height forward of the 25' front BRL that either abut busy streets (ex: Brookville Road or Western Avenue) and/or are at corner properties with front doors on the side streets so that the fences enclose what is effectively the side yard (ex: 21 East Melrose Street or 209 Primrose Street). Additionally the requests have been for fences which run alongside (parallel to) the sidewalk or street. In this application, the proposed fence would be perpendicular to the front property line and hence could be considered visually less prominent from the street, with less impact on the openness of the streetscape. Other cases (on less highly trafficked streets) include:

In 2001 Mr. and Mrs. Ronald Shapiro of 5620 Grove Street were **granted** a variance to **replace** a five (5) foot fence with a fence measuring six and one-half (6 ½) feet in height between the twenty-five (25) foot front BRL and the front (Oliver Street) property line. In 2006 Mr. and Mrs. Robert Fossi were **granted** a variance to install a wrought iron fence measuring six and one-half (6 ½) feet in height in the front (Cedar Parkway) yard (that fence was never installed). In 2011 Dr. & Mrs. Lawrence Heilman were granted a variance to replace a fence measuring six feet in height and located twenty-one inches from the Cedar Parkway public sidewalk.

Denials: Of the requests for variances for fences in excess of the allowable four (4) foot height in front yards, applications which were **denied** tended to be at properties that were not located on busy streets and/or were located mid-block. For instance, in 1999 Mr. and Mrs. Christopher Knopes of 5804 Cedar Parkway were **denied** a variance to **construct** a fence measuring five and one-half (5 ½) feet in height in the front (Hesketh) Street yard (parallel to the sidewalk). In 2000 Ms. Catherine Cotter and Mr. John Finneran of 16 Magnolia Parkway were **denied** a variance to **install** a wood picket fence measuring four and one-half (4 ½) feet in height in the front (West Irving Street) yard (parallel to the sidewalk); in 2001 Mr. & Mrs. Michael Denger **withdrew** a request to replace a six foot stockade fence, a portion of which was located forward of the 25' front (Grafton Street) BRL; in 2003 Mr. Clarke Camper of 6 Primrose Street **withdrew** a request to install a fence measuring six (6) feet in height along the west (side) property line and extending eleven (11) feet forward of the 25' front BRL.

FINDINGS REQUIRED:

1. The proposed variance is required because special conditions exist whereby the enforcement of the requirements of [the Village Building Code] would result in an unwarranted hardship and injustice to the owner;
2. The proposed variance will most nearly accomplish the intent and purpose of the requirements of the Village Building Code; and
3. Except for variances from the requirements of Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [public rights-of-way] of the Village Regulations, the structure authorized by the proposed variance would not violate any covenant applicable to the property [thus not applicable in this case].

Draft Motion

I move to APPROVE/DENY the variance request in Case A-6743 on the basis that the evidence presented, including the Staff Report and Case Synopsis, demonstrates that the applicable requirements for approval of the variance HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the variance request.

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 8th day of June, 2015 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6743
MR. THOMAS S. DANN &
MS. MELISSA SHACKLETON DANN
27 WEST KIRKE STREET
CHEVY CHASE, MARYLAND 20815**

The applicants seek a variance from the Board of Managers pursuant to Section 8-9 of the Chevy Chase Village Building Code to install a wood fence measuring a maximum of six and one-half (6 ½) feet in height located forward of the twenty-five (25) foot front (Magnolia Parkway) building restriction line.

The Chevy Chase Village Code Sec. 8-21(e) states:

No person shall construct any fence or wall which exceeds forty-eight (48) inches in height at any location between the front lot line and the front building restriction line.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed (and emailed where possible) and to abutting and confronting property owners on the 28th day of May, 2015.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**



May 28, 2015

Mr. & Mrs. Thomas S. Dann
27 West Kirke Street
Chevy Chase, MD 20815

Dear Mr. & Mrs. Dann:

Please note that your request for a Special Permit and a variance to construct new fencing on your property and in the West Kirke Street public right-of-way abutting it is scheduled for consideration before the Board of Managers on Monday, June 8, 2015 at 7:30 p.m. Either you or another representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of the request.

A decision will be made by the Board at the hearing and staff will be directed to draft a decision for Board approval and signature by the Board secretary, following which the applicable Building Permit may be issued and the applicable license to use the right-of-way can be executed. No work may commence on the work until all applicable permits and license are obtained.

For your convenience, enclosed please find copies of the Public Hearing Notice and mailing list. Please contact the Village office in advance if you are unable to attend.

Sincerely,

Ellen Sands
Permitting and Code Enforcement
Chevy Chase Village

Enclosures

CHEVY CHASE VILLAGE
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
Phone (301) 654-7300
Fax (301) 907-9721
ccv@montgomerycountymd.gov
www.chevychasevillagemd.gov

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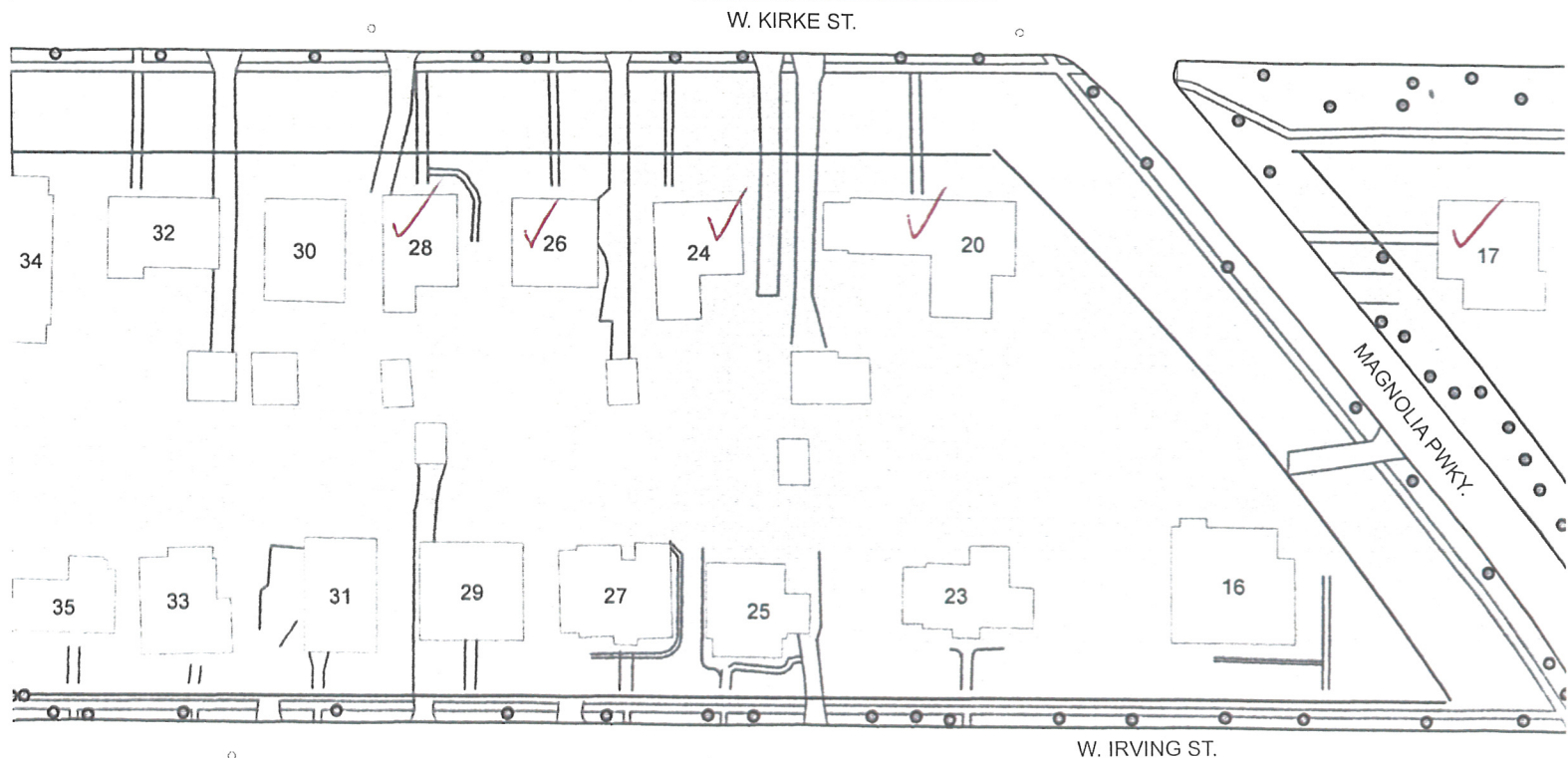
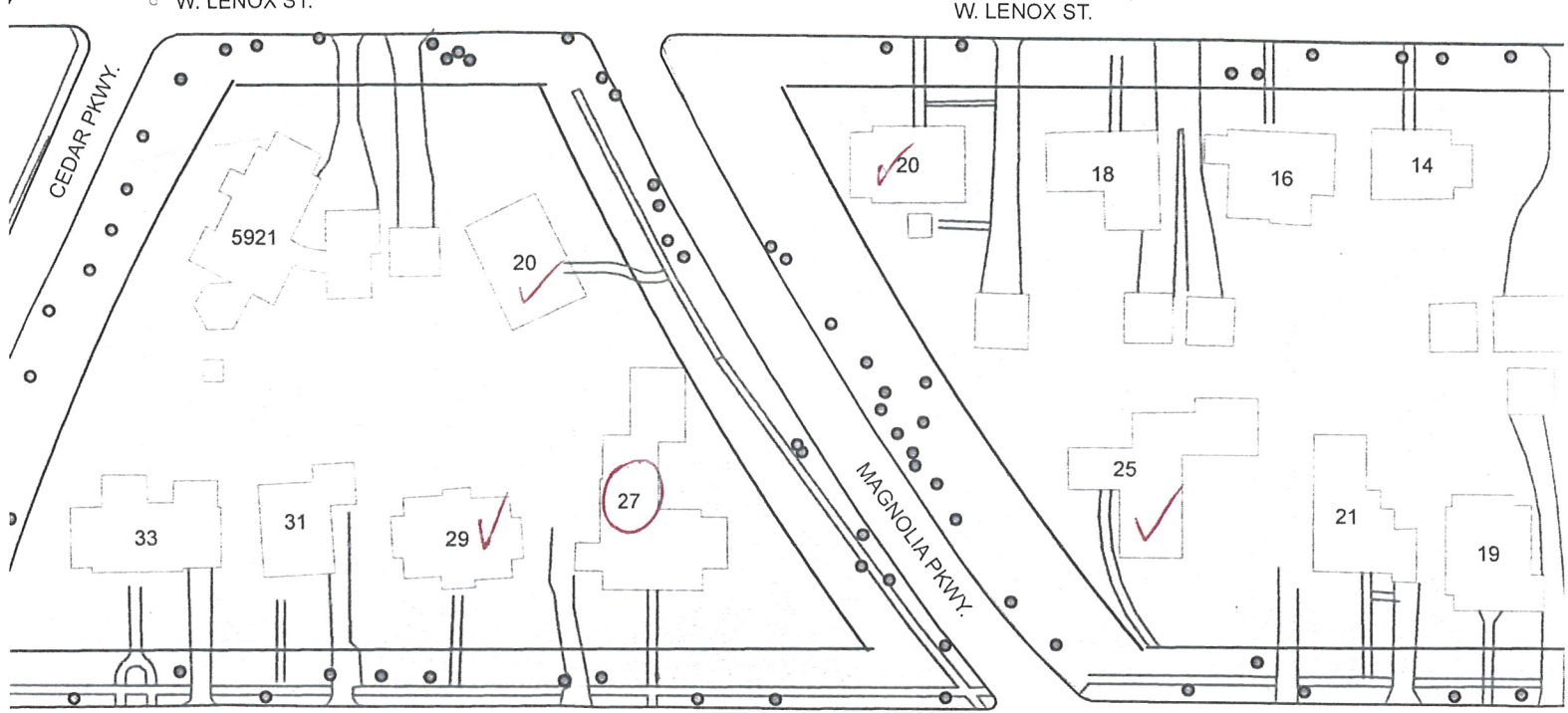
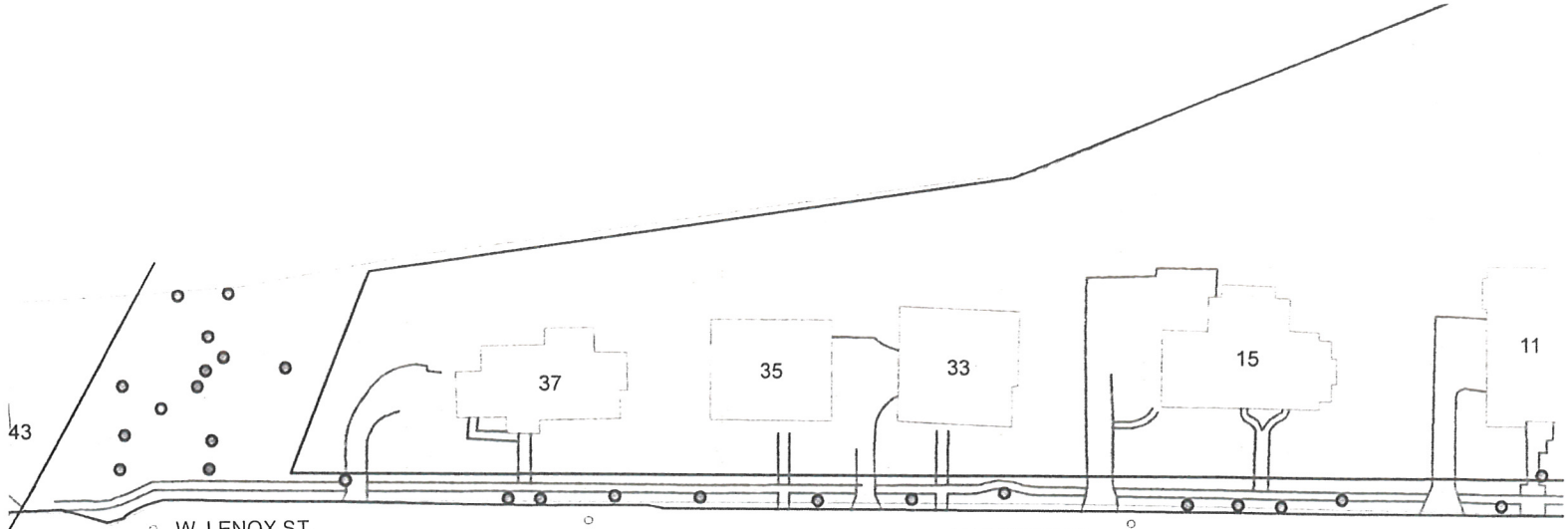
MAILING LIST FOR APPEAL A-6743

**MR. THOMAS S. DANN &
MS. MELISSA SHACKLETON DANN
27 WEST KIRKE STREET
CHEVY CHASE, MD 20815**

Adjoining and confronting property owners	
Mr. & Mrs. Dan Coughlan Or Current Resident 20 West Lenox Street Chevy Chase, MD 20815	Mr. & Mrs. Peter Keisler Or Current Resident 20 Magnolia Parkway Chevy Chase, MD 20815
Mr. & Mrs. Bryan Anderson Or Current Resident 29 West Kirke Street Chevy Chase, MD 20815	Ms. Margot Humphrey Or Current Resident 25 West Kirke Street Chevy Chase, MD 20815
Ms. Donna Evers Or Current Resident 28 West Kirke Street Chevy Chase, MD 20815	Mr. & Mrs. Richard A. Leach Or Current Resident 26 West Kirke Street Chevy Chase, MD 20815
Mr. & Mrs. Michael McGarry Or Current Resident 24 West Kirke Street Chevy Chase, MD 20815	Mr. & Mrs. C. Benjamin Crisman Or Current Resident 20 West Kirke Street Chevy Chase, MD 20815
Mr. & Mrs. C. King Mallory Or Current Resident 17 Magnolia Parkway Chevy Chase, MD 20815	


I hereby certify that a public notice was mailed (and emailed where possible) to the
aforementioned property owners on the 28th day of May, 2015.

**Ellen Sands
Permitting and Code Enforcement Coordinator
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815**



**Chevy Chase Village
Building Permit Application
for Fences & Walls**

Permit No: 6743

Property Address: 27 W. Kirker St.

Resident Name: Tom & Melissa Dann

Daytime telephone: 301-654-0424

Cell phone: 202-489-4201

After-hours telephone:

E-mail: melissadann@gmail.com

Primary Contact for Project:

☒ Resident

☐ Architect

☐ Project Manager

☐ Contractor*

*MHIC/MD Contractor's License No. (required):

Primary Contact Information:

Name: see above

Daytime telephone:

After-hours telephone:

E-mail:

Description of Fence or Wall Project:

see attached

Check appropriate box:

☒ Fence or wall to be constructed is: (1) new, (2) an enlargement of an existing fence or wall, or (3) replacing an existing fence or wall with one of a different kind.

☒ Fence or wall to be constructed is replacing an existing fence or wall with the same kind and in the same location.

Parking Compliance:

Is adequate on-site parking available for the construction crews?

☒ Yes

☐ No

If no, please attach a parking plan which minimizes inconvenience to neighboring residents, and indicate if the property is in a permit parking area.

Will road closings be required due to deliveries, equipment or other reasons?

☐ Yes

☒ No

To be completed by Village staff:

Is this property within the historic district?

Yes ☒

No ☐

Staff Initials: ES

Date application filed with Village: 5/8/15

Date permit issued: _____

Expiration date: _____

Guidelines for Building, Replacing and Maintaining Fences and Walls

Sec. 8-21 of the Village Code regulates fences and walls. To repair or maintain an existing fence or wall, the Village does not require a building permit. To install or replace a fence or wall, however, residents will need a Village building permit. (A building permit may also be required from Montgomery County, including the Historic Preservation Commission, if the property is within the Historic District). Village Code allows fences and walls to be installed on a resident's property lines, inside the property lines on private property, and sometimes in the public right-of-way.

When placed on the property lines or on private property, the Village Code regulates fence and wall heights in two ways:

1. Fences and walls installed on private property anywhere between the property line and the front building restriction line may not exceed four (4) feet in height.
2. Fences and walls installed to the rear of the front building restriction line (that is, along the side and rear property lines or in the side and rear yards) may not exceed six and one-half (6 ½) feet in height.

When measuring the height of a fence or wall, the Village Code provides that the "measurement shall be made from the surface of the ground of the lower yard next to the fence or wall" **to the highest point of the fence or wall** (such as the top of the posts, caps, decorative lattice, finials, etc.). For example, if a fence post is 6 ½ feet high, then a cap on that post would exceed the height limit.

Walls can sometimes change the flow of water on a property. In such cases, residents or contractors will need to include a drainage plan with the building application.

When installing a fence or wall in the Village's public right-of-way, in addition to obtaining a Village Building Permit, residents must sign a **License to Use the Public Right-of-Way**, which may be recorded with your deed (please contact the Village office for more information). Fences and walls installed in the Village's rights-of-way may not exceed four (4) feet in height.

Fences and walls must be installed at least three (3) feet from the public sidewalk, or where there is no sidewalk, at least six (6) feet from the curb or nearest edge of the street or alley.

Special height limits apply to fences near an intersection on corner lots. The Village office will not be issue permits for any fences or walls that block necessary sight lines at intersections or otherwise create a dangerous condition.

For complete Village Code requirements, please see Chapters 8 & 25.

Building Permit Application for Fences and/or Walls: Filing Requirements

Application will not be reviewed until the application is complete

- ☒ Copy of stamped drawings approved by Montgomery County Department of Permitting Services (DPS) and the Historic Preservation Commission (HPC), if required. Every page of drawings must be clearly stamped.
- ☒ This application form, signed by resident.
- ☒ Boundary Survey
- ☒ Site Plan (see: Village Site Plan Checklist to ensure completeness)
- ☐ Building plans and specifications
- ☐ Tree Preservation Plan requested of Village arborist (see: Village Tree Inspection Request form). All required tree protections must be fully installed before any work begins.
- ☐ Filing Fee (due at time of application).
- ☐ Damage deposit or performance bond (due when permit is issued). Amount will be set by Village Manager.

Once this permit application is complete, the Village Manager will review the application and accompanying documents and, under most circumstances, act on the application within 5 to 10 working days.

If the Montgomery County permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed.

No signs advertising any service provider may be posted on the work site.

I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Montgomery County Zoning Code, the Village Code including Urban Forest code, and any covenants and easements on the subject property.

Applicant's Signature:  **Date:** 5.18.15

For Use By Village Manager	Application approved with the following conditions:
For Use By Village Manager <div style="border: 2px solid black; padding: 10px; text-align: center;"> DENIED MAY 21 2015 Chevy Chase Village Manager </div>	Application denied for the following reasons:

Filing Fees (due when application submitted)	Checks Payable to:
Permit Application Fee: <input type="checkbox"/> \$30.00 (if fence or wall is new, enlarged or replaced with different kind) <input type="checkbox"/> \$15.00 (if fence or wall is being replaced in-kind and in the same location) <input checked="" type="checkbox"/> \$50.00 (if construction is in the Public Right-of-way)	Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Tree Preservation Plan Fee: <input type="checkbox"/> \$250.00 <input checked="" type="checkbox"/> Not required for this project	
TOTAL Fees: \$50.00	Date: 5/21/15 Staff Signature: <i>[Signature]</i>
Damage Deposit/Performance Bond <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager	Date: Village Manager Signature:

For Village Staff use: Field file for inspections by Code Enforcement Officer has been created: <input type="checkbox"/> Yes (Date: _____)
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Chevy Chase Village

Application for a Variance

A variance is permission granted by the Board of Managers pursuant to, and subject to, the conditions of Sec. 8-9(c) of Chapter 8 to construct, install, remove or alter a structure or planting, or take any other action that does not otherwise meet the requirements of the Chapter. Except as provided in Sec. 8-11 a variance can be granted only by the Board of Managers.

Subject Property: <u>27 W. Kirke Street</u>	
Describe the Proposed Project: <u>To install a 6'12" fence along the north side of the property. Currently, there is a 6' similar-height fence in disrepair on the 20 Magnolia Pkwy. side (see attached)</u>	
Applicant Name(s) (List all property owners): <u>Tom + Melissa Dann</u>	
Daytime telephone: <u>301-654-0626</u>	Cell: <u>202-489-6201</u>
E-mail: <u>melissadann@gmail.com</u>	
Address (if different from property address):	
For Village staff use:	
Date this form received: <u>5/18/15</u>	Variance No: <u>A-6743</u>

Filing Requirements:

Applications will be reviewed for satisfaction of all requirements and are not considered complete until approved as such by staff.

- ☒ Completed Chevy Chase Village Application for a Variance (this form)
- ☐ Completed Chevy Chase Village Building Permit Application
- ☐ Completed Chevy Chase Village Website Posting Notice
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☒ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☐ Copy of Covenants applicable to the property except for variances from Secs. 8-21 or 8-26 of Chapter 8 (Building Regulations) or Chapter 25 (Public Rights-of-Way) of the Chevy Chase Village Code.
- ☐ Variance fee (See fee schedule listed in Chapter 6 of the Village Code).

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this variance request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: [Signature]

Date: 5-18-15

Applicant's Signature: [Signature]

Date: 5-22-15

Describe the basis for the variance request (Applicants should become familiar with the pertinent sections of the Village Code. Attach additional pages as needed):

Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village:

see attached

Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

see attached

Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

see attached

In exercising its powers in connection with a variance request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

Variance Filing Fee <i>Per Village Code Sec. 6-2(a)(24):</i> <input checked="" type="checkbox"/> \$300.00 for new construction. <input type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. <input type="checkbox"/> Other: \$ _____ Fee Paid: \$300.00	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815 Date Paid: 5/21/15 Staff Signature: [Signature] Approved to Issue Building Permit per Board Decision Signed by the Board Secretary. Signature: _____ Village Manager Date: _____
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May 21, 2015

GENERAL BACKGROUND:

27 W. Kirke Street occupies the corner lot at W. Kirke Street and Magnolia Parkway. Built in 1919, the house is a Classical Revival design that is a contributing resource within the CCV Historic District. The lot on which the house sits is unusual in that the 25' BRL on the East side of the property actually dissects the house and is grandfathered into the Title Insurance. At one point (we believe prior to 1980), there was an extensive white picket fence that fronted the entirety of the house along W. Kirke Street. The lot is irregularly shaped: it is truncated by Magnolia Parkway; the house is located extremely far forward on the property line and the front BRL is therefore far back past the front plane of the house.

We have received HPC approval for the below-described proposals:

SPECIAL PERMIT REQUEST: REPLACEMENT OF IRON PANELS WITH PICKET PANELS:

separate application

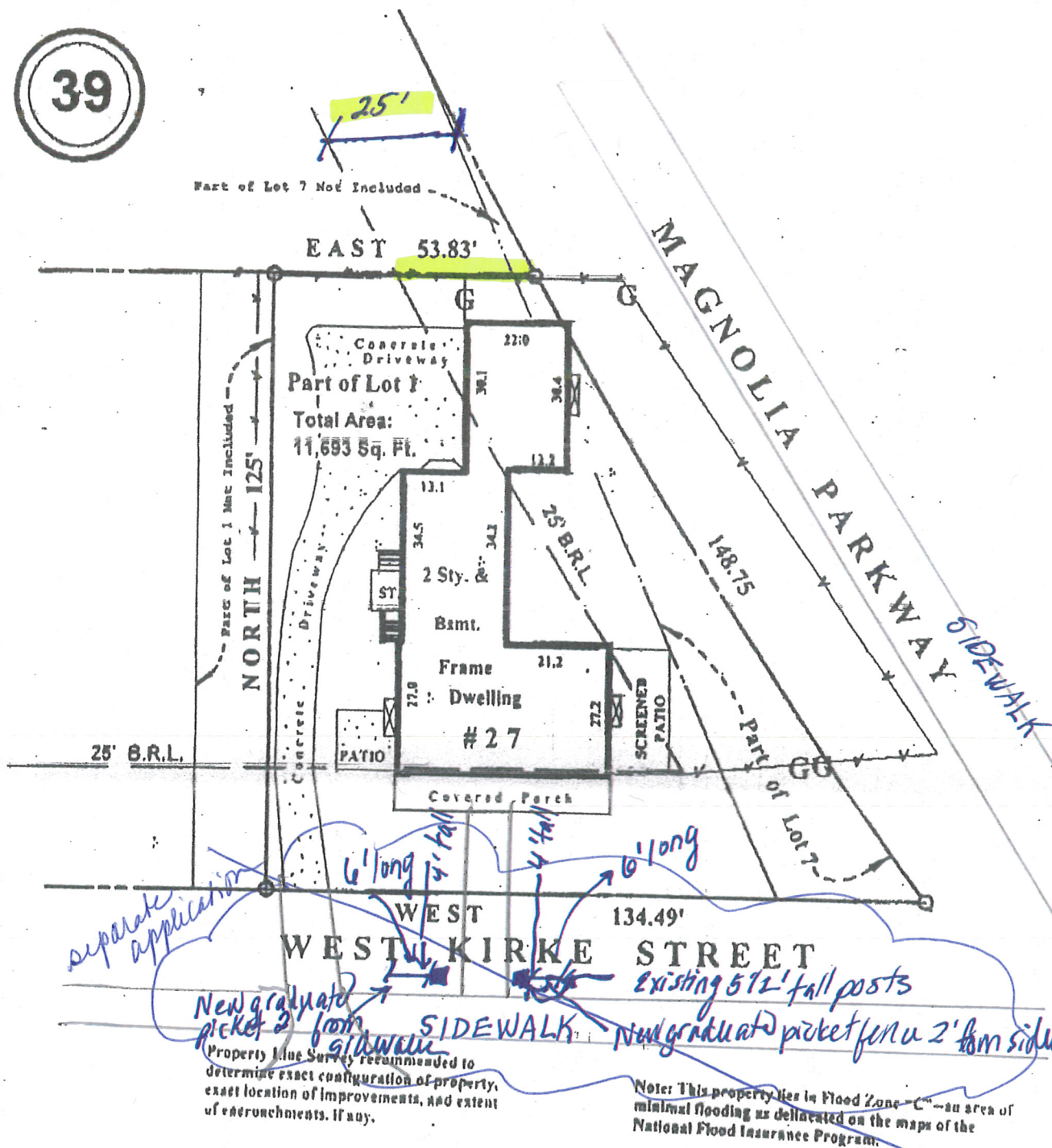
On the W. Kirke side of our property, there are two posts topped by urns that flank the front walk. The posts are approximately 5 ½' tall, sit 2' from the sidewalk and are in the Village right away. Currently non-historically significant iron panels are attached to each post. We propose to replace those panels with a graduated white picket panel running parallel to the sidewalk. The tallest picket will be a maximum of 4' in height and the panel will gradually decrease in height. The entire length of the picket panel will extend 6' on either side of each post and be located 2' from the sidewalk.

APPLICATION FOR VARIANCE REQUEST: INSTALLATION OF A PRIVACY FENCE

We seek permission to install a fence along part of the North side of our property that would measure 6 ½' in height and is forward of the 25-foot BRL. The fence will extend forward of the BRL by 25'.

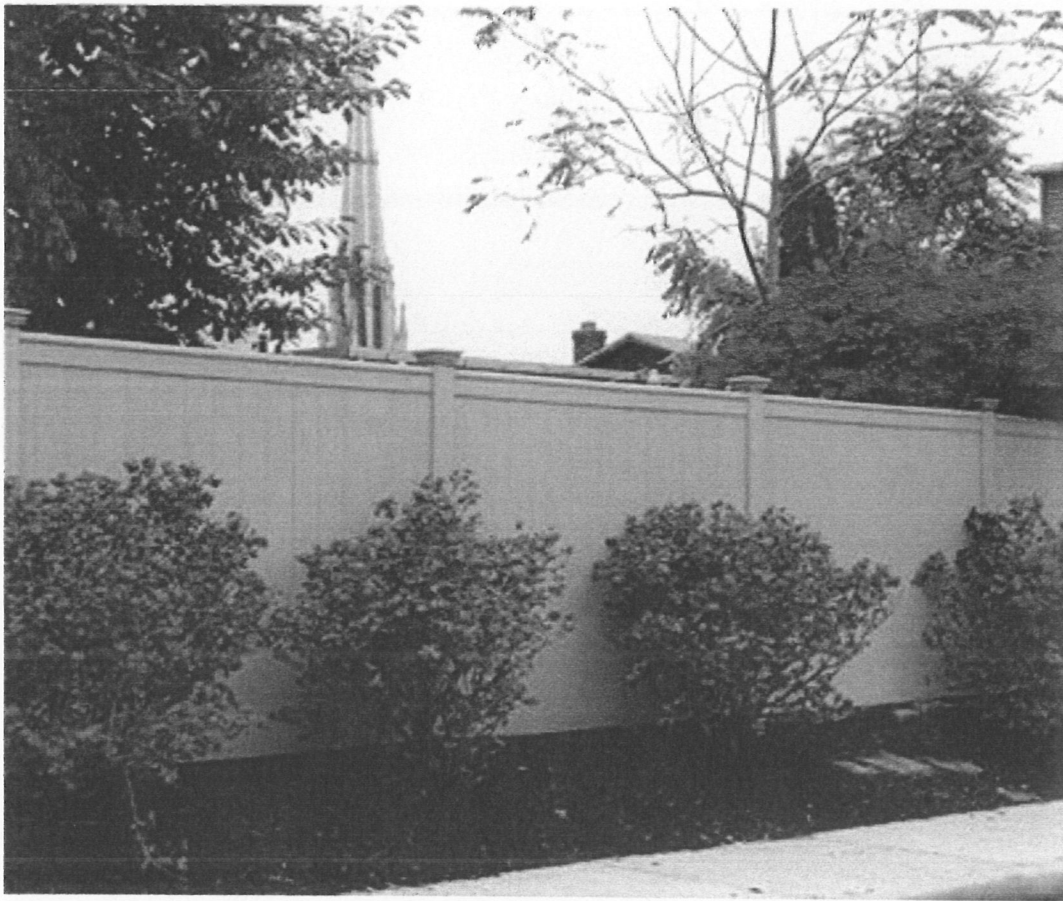
301-277-8878

39



Location Drawing of:	LOT: Pts. 1 & 7	BLOCK: 39
#27 West Kirke Street	PLAT BK: 2	PLAT#: 106
Section No. 2	DATE: 5-06-03	SCALE: 1"=30'
CHEVY CHASE	CASE NUMBER:	030658

11



IDENTICAL FENCE TO ABOVE EXAMPLE BUT WITHOUT LATTICE TOPPER THIS FENCE WOULD BE BETWEEN NORTHSIDE OF 27 W. KIRKE STREET AND SOUTHSIDE 20 MAGNOLIA PARKWAY